

ZANE AND RUDOFSKY

Attorneys and Counsellors at Law

THE STARRETT LEHIGH BUILDING
601 WEST 26TH STREET
NEW YORK 10001
(212) 245-2222

FAX (212) 541-5555 • VOICEMAIL (212) 541-4444
E-MAIL info@zrlex.com • WEBSITE <http://www.zrlex.com>

Please Note Our New Contact Information:

c/o Edward S. Rudofsky, P.C., Five Arrowwood Lane, Melville, New York 11747
ed@rudofskylaw.com; 917-913-9697

May 18, 2023

Hon. Lewis J. Liman, U.S.D.J.
Southern District of New York
United States Courthouse
500 Pearl Street
New York, NY 10007

Via ECF

Re: **689 Eatery Corp., etc. et ano. v. City of New York, et al.,**
Docket No. 02 CV 4431 (LJL) ("Action No. 1")

59 Murray Enterprises, Inc. etc., et ano. v. City of New York, et al.,
Docket No. 02 CV 4432 (LJL) ("Action No. 2")

Club at 60th Street, et al. v. City of New York
Docket No. 02 CV 8333 (LJL) ("Action No. 3")

336 LLC, etc, et al. v. City of New York
Docket No. 18 CV 3732 (LJL) ("Action No. 4")

Dear Judge Liman:

We represent the Plaintiffs in Action No. 2 and write on behalf of all counsel for all parties, jointly.

By Order filed May 8, 2023, the Court, *inter alia*, clarified the procedure to be followed in these actions, regarding the filing of witness declarations as direct testimony, as follows:

... as long as the parties are in agreement, the Court will accept a letter on May 19, 2023, from the parties indicating which of the declarations previously submitted in motion practice are intended to be submitted as testimony at the trial on the merits.

ZANE AND RUDOFISKY

Counsel for the parties have conferred and are in agreement. Accordingly, we respectfully advise the Court that the declarations and affidavits identified on the Schedules annexed hereto are the declarations and affidavits, previously submitted in motion practice, together with their respective exhibits, that are intended to be submitted as testimony at the trial on the merits.

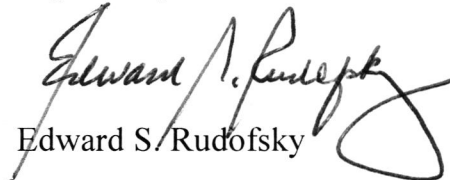
Schedule A identifies the previously filed declarations and affidavits to be submitted as direct trial testimony by Plaintiffs.

Schedule B identifies the previously filed declaration to be submitted as direct trial testimony by Defendants.

Except as specifically noted, all declarations and affidavits were filed in all four of the above-referenced actions on the date stated.

Pursuant to the Court's Order filed May 2, 2023, in addition to the Consolidated Statement of Stipulated Facts that will be filed by May 19, 2023, counsel will also by that date separately file any additional witness declarations (not previously submitted in motion practice) intended to be relied upon as direct trial testimony.

Respectfully,


Edward S. Rudofsky

Cc: All Counsel (Via E-Filing)

ZANE AND RUDOFISKY

Schedule A

Declarations and Affidavits, Previously Submitted in Motion Practice, That Are Intended to be Submitted By Plaintiffs as Direct Trial Testimony at the Trial on the Merits

(Preliminary Injunction Motion)

(Filed in Plaintiffs' Appendix)

1. Declaration of Michael Berzak Regarding Adult Business Sites, filed 11/21/18.
2. Declaration of Michael Berzak in support of Permitting Issues, filed 11/21/18.
3. Declaration of Hugh Kelley, filed 11/21/18.
4. Affidavit of Lance Freeman, filed 11/21/18.
5. Declaration of David M. Talla, filed 11/21/18.
6. Declaration of Keith Warech, filed 11/21/18.
7. Declaration of Anthony Capeci, filed 11/21/18.
8. Declaration of Barry Lipsitz, filed 11/21/18.
9. Declaration of Anthony D'Amico, filed 11/21/18.
10. Declaration of Maurice Kavanagh, filed 11/21/18.
11. Declaration of Edward S. Rudofsky Regarding Legislative History and Related Matters, filed 11/21/18
12. Declaration of Edward S. Rudofsky Regarding The Status of Veil NYC and Headquarters n/k/a Rosewood Theater, filed 11/21/18.
13. Declaration of Dr. Elliot Sclar, filed 11/21/18.
14. Declaration of Daniel J. Zazzali, filed 11/21/18.
15. Declaration of Daniel Knecht, filed 11/21/18.
16. Declaration of Yitzik Shachaf, filed 11/21/18.
17. Declaration of Erica Dubno, filed 11/21/18.

(Separately Filed)

18. Supplemental Declaration of Michael Berzak, filed 1/3/19.

(Filed in Plaintiffs' Reply Appendix)

19. Reply Declaration of Michael Berzak Re: Permitting Issues, filed 3/15/19.
20. Reply Declaration of G. Randall Garrou Re Source of City's NYCAC Provisions Utilized by Plaintiffs, filed 3/15/19.
21. Reply Declaration of Michael Berzak Re: Adult Business Sites, filed 3/15/19.
22. Reply Declaration of Dr. Elliot Sclar, filed 3/15/19.

ZANE AND RUDOFISKY

(Partial Summary Judgment Motion)

23. Declaration of Michael Berzak, filed 9/16/22.
24. Affidavit of Keith Warech, filed 9/16/22 (Action No. 1).
25. Declaration of Barry Lipsitz, filed 9/16/22, refiled 9/23/22 (Action No. 2).
26. Declaration of Anthony D'Amico, filed 9/16/22 refiled 9/23/22 (Action No. 2).
27. Declaration of David M. Talla, filed 9/16/22 (Action No. 3).
28. Declaration of Daniel J. Zazzali, filed 9/16/22 (Action No. 4).
29. Declaration of Daniel Knecht, filed 9/16/22 (Action No. 4).

[Schedule B follows on the next page.]

ZANE AND RUDOFISKY

Schedule B

Declarations and Affidavits, Previously Submitted in Motion Practice, That Are Intended to be Submitted By Defendants as Direct Trial Testimony at the Trial on the Merits

1. Declaration of Frank Ruchala, Jr., filed 3/28/23.